IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

MFA.No. 1230 of 2001(A)

OPMV.2587/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANT - PETITIONER:

K.V. GANESHAN, S/O. KUNHAN,
KIZHAKKE VALAPPIL HOUSE,
P.O. KOLAMBA, MALAPPURAM DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN
SRI.M.P.PRABHANANDAN

RESPONDENTS - RESPONDENTS:
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1. K.T. MOHAMMED, S/O. POCKER, OWNER,
LORRY BEARING REG. NO.KEF 3954,
KULATHIL THODI HOUSE, P.O. THIRUNAVAYA
MALAPPURAM DISTRICT.

2. A.K. ABDUL AZEEZ, S/O. KUNHIKOYA, DRIVER,
LORRY BEARING REG. NO.KEF 3954,
ATHIKKALL HOUSE, KURUMBATHOOR,
MALAPPURAM DISTRICT.

3. UNITED INDIA INSURANCE COMPANY LTD.,
POLICY NO.101002/31/21/1/50198/95
SUBKA BUILDING, P.B. NO.88,
THAZHEPALAM, TIRUR.

BY ADV. SMT.NARAYANIKUTTY CHETTOOR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. 1230 OF 2001

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Dated this the 27th day of September, 2007

J U D G M E N T

Petitioner in O.P(MV) No.2587 of 1996 on the file of the Motor Accidents Claims Tribunal, Tirur is the appellant. Appeal is filed against the award passed by the Tribunal dismissing the petition filed by the petitioner claiming compensation.

2. Petitioner, driver of Jeep bearing Reg. No.KRB-336, was driving the vehicle. When the vehicle reached at Chembikkal, a collision took place between the Jeep driven by the petitioner with a lorry bearing Reg.No.KEF-3954 and the petitioner sustained injuries. He filed the Original Petition contending that the accident occurred due to the negligence of the driver of the lorry and hence the owner and driver of the lorry were responsible to pay the compensation. It was further contended that the vehicle was covered with a valid policy of insurance and as such the Insurer is liable to pay the compensation. In the very same accident one Smt. Amina, who was travelling in the Jeep, also sustained injuries. She filed O.P(MV) No.2567 of 1996 claiming compensation against the

petitioner, his owner, Insurer as well as the driver, owner and Insurer of the lorry. The very same Tribunal by award dated 15.5.2000 found that the accident occurred due to the negligence of the driver of the Jeep as well as the driver of the lorry. Tribunal further found that both drivers are equally liable and the liability was apportioned in the ratio of 50:50. It was also found that both the vehicles were covered by valid policy of insurance. The Insurers of both vehicles were directed to deposit the compensation awarded in equal proportion. Copy of that award was produced in this case as Exhibit B1. It was contended that the said decision will operate as res judicata. The Tribunal based on a strange reasoning held that that decision will not operate as res judicata. It was held as follows:

> "According to the learned counsel, the decision in O.P(MV) No.2567/96 acts as res judicata. But I do not think the decision is res judicata, that is because even in the judgment, it is very clearly stated that the scene mahazar, charge sheet and other relevant documents were not produced in that case and the Tribunal was deciding in the absence of such evidence. That is to say, the finding of my learned predecessor was based on only the available evidence at that time".

3. The reasoning of the Tribunal is illegal and perverse. No court can consider the correctness of a factual finding rendered in a judicial proceeding in another parallel proceeding. The only remedy available is to challenge that decision in accordance with law. In O.P(MV) No.2567 of 1996 drivers, owners and Insurers of both the vehicles were made parties. Tribunal found that the accident occurred due to the negligence of both the drivers. So far as the parties to that proceedings are concerned, they are bound by the judgment unless and until it is set aside in appeal. None of the parties to that case had filed appeal and that decision has become final and conclusive. So in this case the Tribunal cannot consider the question of negligence independent of other decision. That finding will clearly operate as res judicata. I hold that the accident occurred due to the negligence of both the drivers of the Jeep and lorry and both of them are equally liable. So the Tribunal ought to have apportioned the compensation due to the petitioner and directed the Insurer of the lorry to deposit one half of the same. The Tribunal had not quantified the amount of

compensation payable to the petitioner. So I have no other option, but to set aside the award passed by the Tribunal and remand the matter for quantifying the compensation.

4. In the result, appeal is allowed. The award passed by the Tribunal is set aside and the matter is remanded. The Tribunal is directed to quantify the compensation due to the petitioner.

Parties are directed to appear before the Tribunal on 15.11.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. 1230 OF 2001

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J U D G M E N T

27TH SEPTEMBER, 2007